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FIRST GENERAL COUNSEL'S REPORT

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MUR: 6938

DATE COMPLAINT FILED: May 13, 2015

DATE OF NOTIFICATION: May 21, 2015

DATE OF LAST RESPONSE: July 27, 2015

DATE ACTIVATED: September 3, 2015

EXPIRATION OF SOL: March 25, 2020

ELECTION CYCLE: 2016

COMPLAINANTS:

American Democracy Legal Fund

RESPONDENTS:

Rand Paul for President, Inc. and Paul Kilgore  
in his official capacity as treasurer

Senator Rand Paul

Peter Schweizer

HarperCollins Publishers LLC

RELEVANT STATUTES  
AND REGULATIONS:

52 U.S.C. § 30101(8)

52 U.S.C. § 30116(a)(1)(A)

52 U.S.C. § 30118(a)

52 U.S.C. § 30118(b)(2)

11 C.F.R. § 100.52(d)(1)

11 C.F.R. § 106.4(b)

11 C.F.R. § 110.1(b)

INTERNAL REPORTS CHECKED:

Disclosure reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

On March 25, 2015, journalist and author Peter Schweizer met with Senator Rand Paul to discuss his upcoming book, *Clinton Cash: The Untold Story of How and Why Foreign Governments and Businesses Helped Make Bill and Hillary Rich*, which was released to the public in May 2015. The Complaint alleges that in doing so, Schweizer made an excessive in-

kind contribution, and his publisher, HarperCollins Publishers, made a prohibited corporate

contribution to Paul and his presidential authorized campaign committee, Rand Paul for President, Inc., by offering access to information that Paul then used to campaign against Hillary Clinton in the 2016 presidential election.

For the reasons explained in more detail below, we recommend that the Commission find no reason to believe that Schweizer or HarperCollins made, and Paul or his authorized campaign committee received, an excessive or prohibited corporate in-kind contribution.

## II. FACTUAL BACKGROUND

Peter Schweizer is a journalist and author who has written books and articles on public policy issues, such as government waste and insider trading by members of Congress. His most recent book, entitled *Clinton Cash: The Untold Story of How and Why Foreign Governments and Businesses Helped Make Bill and Hillary Rich*, was released by HarperCollins Publishers LLC on May 5, 2015.<sup>1</sup> The book details his investigation into the purported conflicts of interest of former President Bill Clinton and his wife, former U.S. Senator and Secretary of State Hillary Clinton, during Mrs. Clinton's time in public office. The book particularly focuses on alleged links between Hillary Clinton's actions as Secretary of State and foreign donations in the form of speaking fees paid to Bill Clinton, as well as charitable gifts to the Bill, Hillary & Chelsea Clinton Foundation, a Section 501(c)(3) nonprofit organization founded by the Clintons in 2001.<sup>2</sup>

On March 25, 2015, just over a month before *Clinton Cash* was released, Schweizer met for approximately one hour with Senator Rand Paul at his office to discuss the substance of the

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<sup>1</sup> Compl. at 2.

<sup>2</sup> *Id.*

book.<sup>3</sup> Schweizer, HarperCollins, and Rand Paul for President each assert that the purpose of

Schweizer's meeting with Paul was to discuss the Clintons' purported conflicts of interest with a member of the Senate Foreign Relations Committee.<sup>4</sup> Schweizer states in a sworn affidavit that they only discussed the possibly unethical or illegal actions of Bill and Hillary Clinton, as examined in his book, and not the 2016 election. During the meeting, Paul suggested that Schweizer also meet with Senator Robert Corker, Chair of the Senate Foreign Relations Committee, and Paul's office arranged that meeting, which took place two days later on March 27, 2015.<sup>5</sup> Schweizer and HarperCollins both assert that Schweizer did not inform HarperCollins of his intention to meet with either Paul or Corker, and that HarperCollins was not even aware that these meetings took place.<sup>6</sup> Schweizer asserts that he was not compensated by HarperCollins or anyone else for attending these meetings.

At the time of the meeting, Paul had not yet announced his candidacy for President. Schweizer avers that he knew Paul was not a candidate in the 2016 election at the time of their March 25 meeting. On April 7, 2015, Rand Paul for President, Inc. filed its Statement of Organization as Paul's authorized campaign committee for the presidential election and designated Paul Kilgore as its treasurer; Paul filed his Statement of Candidacy for the presidential election one day later, on April 8.<sup>7</sup>

<sup>3</sup> Schweizer Resp. at 4.

<sup>4</sup> Schweizer Resp. at 4, 12; Cmte. Resp. at 1-2; *see* HarperCollins Resp. at 2. The Respondents also argue that the information conveyed in the discussion was not a "contribution," *see* Cmte. Resp. at 1-2, Schweizer Resp. at 4, HarperCollins Resp. at 2; alternatively, they argue that the alleged contribution would fall under the press exemption, *see* Schweizer Resp. at 10, HarperCollins Resp. at 4; the exemption for bona fide commercial activity, *see* Schweizer Resp. at 11, HarperCollins Resp. at 3; or the exemption for voluntary activity, *see* Schweizer Resp. at 6-8.

<sup>5</sup> Schweizer Resp. at 4-5.

<sup>6</sup> Schweizer Resp. at 5; HarperCollins Resp. at 1.

<sup>7</sup> *See* Statement of Organization at 1; Statement of Candidacy at 1.

### III. LEGAL ANALYSIS

#### A. Legal Standard

Under the Federal Election Campaign Act of 1971, as amended, (the "Act") a contribution includes "any gift, subscription, loan, advance, or deposit of money or *anything of value* made by any person *for the purpose of influencing* any election for Federal office."<sup>8</sup> "Anything of value" includes all in-kind contributions, such as "the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services."<sup>9</sup>

The Act prohibits any person from making a contribution to a candidate for federal office in excess of \$2,700 per election.<sup>10</sup> The Act also prohibits corporations from making a "contribution or expenditure" to any federal candidate or their authorized campaign committee.<sup>11</sup> With respect to corporations, "the term 'contribution or expenditure' . . . includes any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or *anything of value* . . . to any candidate [or] campaign committee . . . *in connection with any election* . . . ."<sup>12</sup>

#### B. Discussion

The Complaint alleges that the meeting between Schweizer and Paul was an in-kind contribution to Paul's presidential campaign because Schweizer provided free, valuable access to nonpublic information that Paul could use to attack Hillary Clinton, a candidate in the 2016

<sup>8</sup> 52 U.S.C. § 30101(8)(A)(i) (emphasis added).

<sup>9</sup> 11 C.F.R. § 100.52(d)(1).

<sup>10</sup> 52 U.S.C. § 30116(a)(1)(A); *see* 11 C.F.R. § 110.1(b).

<sup>11</sup> 52 U.S.C. § 30118(a).

<sup>12</sup> 52 U.S.C. § 30118(b)(2) (emphasis added).

1 presidential election. The Complaint notes that the value of this in-kind contribution was "likely  
2 in excess of \$2,700," the current per-election limit for individual contributions to a candidate for  
3 federal office.<sup>13</sup> The Complaint adds that HarperCollins also made a prohibited corporate in-  
4 kind contribution to Paul and his campaign committee. The available information does not  
5 support the conclusion that the meeting between Paul and Schweizer resulted in an in-kind  
6 contribution to Paul's presidential campaign because the record does not show that Schweizer  
7 provided "anything of value" "for the purpose of influencing" a federal election.<sup>14</sup>

8 As an initial matter, the record here does not show that in the context of an ongoing  
9 public discussion about the conflict-of-interest concerns discussed in *Clinton Cash*, the  
10 information provided to Paul had "value" under the Act. Schweizer reportedly provided  
11 information about the book to a number of different individuals and distributed copies of the  
12 book prior to its release. For example, Schweizer reportedly sent several news outlets advance  
13 copies of *Clinton Cash* so that they could review it and publish articles based on it. At least one  
14 prominent newspaper, *The New York Times*, published such an article prior to the book's

<sup>13</sup> Compl. at 5.

<sup>14</sup> Under the Act, an individual is deemed to become a candidate when he or she has received aggregate contributions or made aggregate expenditures in excess of \$5000. 52 U.S.C. § 30101(2). It is undisputed that Paul had not yet declared his candidacy for President at the time of his meeting with Schweizer, though we note that Paul filed his Statement of Candidacy less than two weeks later. And since the record indicates that Paul's meeting with Schweizer was not a contribution, the meeting did not trigger candidate status for Paul under the Act.

Further, if an individual receives any contributions in connection with "testing the waters" activities, those contributions must comply with the amount limitations and source prohibitions of the Act, and the individual's authorized committee will have to report receipt of the contributions in its first filed disclosure report. See 11 C.F.R. §§ 100.72(a); 101.3; see also *Republican Majority Fund*, FEC Advisory Op. 1985-40 (Jan. 24, 1986) (explaining that multicandidate committee's expenditures to defray Senator Howard Baker's travel costs during testing the waters phase constituted an "in-kind gift" and would have to be reported as an in-kind contribution if he became a candidate). The Complaint does not allege, however, and the facts do not indicate, that Paul's meeting with Schweizer was part of any "testing the waters" activities by Paul, and disclosure reports filed by Paul's authorized committee show no receipts or disbursements dating back to March 25, 2015.

release.<sup>15</sup> Further, the record indicates that the issues and information included in *Clinton Cash*

were already a subject of much public discussion: several prominent journalists had publicized ethical concerns about the Clinton Foundation's heavy reliance on foreign donations before *Clinton Cash* was released,<sup>16</sup> and the book itself relies on numerous articles published by other journalists long before March 25, 2015.<sup>17</sup> In fact, Paul was already aware of and had spoken publicly about the issue, weeks before he met with Schweizer.<sup>18</sup> Further, it is unclear what specific information in the book may have had any unique value, how one would assess the quantitative value of such information, or even what specific information was presented to Paul. It is clear, however, that any value to be ascribed to that information is undermined by the fact that it was not provided exclusively to Paul, and eliminated once the book was published a little

<sup>15</sup> See Amy Chozick, *New Book, 'Clinton Cash,' Questions Foreign Donations to Foundation*, NEW YORK TIMES (Apr. 19, 2015), available at <http://www.nytimes.com/2015/04/20/us/politics/new-book-clinton-cash-questions-foreign-donations-to-foundation.html> ("[M]ajor news organizations including The Times, The Washington Post and Fox News have exclusive agreements with the author to pursue the story lines found in the book.").

<sup>16</sup> See James V. Grimaldi and Rebecca Ballhaus, *Foreign Government Gifts to Clinton Foundation on the Rise*, WALL STREET JOURNAL (Feb. 17, 2015), available at <http://www.wsj.com/articles/foreign-government-gifts-to-clinton-foundation-on-the-rise-1424223031>; Rosalind S. Helderman and Tom Hamburger, *Foreign governments gave millions to foundation while Clinton was at State Dept.*, WASH. POST (Feb. 25, 2015), available at [http://www.washingtonpost.com/politics/foreign-governments-gave-millions-to-foundation-while-clinton-was-at-state-dept/2015/02/25/31937c1e-bc3f-11e4-8668-4e7ba8439ca6\\_story.html](http://www.washingtonpost.com/politics/foreign-governments-gave-millions-to-foundation-while-clinton-was-at-state-dept/2015/02/25/31937c1e-bc3f-11e4-8668-4e7ba8439ca6_story.html).

<sup>17</sup> See, e.g., John Solomon and Jeffrey H. Birnbaum, *Clinton Library Got Funds From Abroad*, WASH. POST (Dec. 15, 2007), available at <http://www.washingtonpost.com/wp-dyn/content/article/2007/12/14/AR2007121402124.html>; Jo Becker and Don Van Natta, Jr., *After Mining Deal, Financier Donated to Clinton*, NEW YORK TIMES (Jan. 31, 2008), available at <http://www.nytimes.com/2008/01/31/us/politics/31donor.html>; *India Inc. gives millions to Clinton foundation*, BUSINESS STANDARD NEWS (India) (Dec. 20, 2008), available at [http://www.business-standard.com/article/economy-policy/india-inc-gives-millions-to-clinton-foundation-108122001012\\_1.html](http://www.business-standard.com/article/economy-policy/india-inc-gives-millions-to-clinton-foundation-108122001012_1.html); Barbara Shecter, *How TD Bank is linking up with Bill Clinton to win over the U.S. market*, FINANCIAL POST (Canada) (July 24, 2014), available at <http://business.financialpost.com/news/fp-street/how-td-bank-is-linking-up-with-bill-clinton-to-win-over-the-u-s-market>.

<sup>18</sup> Paul commented on March 3, 2015, "The other [thing] that's come out recently that really bothers me is that [Hillary Clinton was] taking foreign donations . . . for her foundation. And I think this almost . . . has the appearance of foreign countries buying influence with someone who could potentially run for the presidency." Andrew Kaczynski, *Rand Paul: Clinton Foundation Taking Foreign Money, Benghazi Worse Than Hillary's Private Email Usage*, BUZZFEED NEWS (Mar. 3, 2015), available at <http://www.buzzfeed.com/andrewkaczynski/rand-paul-clinton-foundation-taking-foreign-money-benghazi-w#.rl4V6VaPL>.

~~1 over a month later.<sup>19</sup> Even if we were to conclude that the information provided to Paul had~~

2 "value" under the Act, the record here does not appear to show that it was provided "for the  
3 purpose of influencing" a federal election.

4 Although at the time of the meeting, Clinton and Paul were widely expected to become  
5 candidates for President in the 2016 election and each did declare their candidacy shortly  
6 thereafter, the factual record does not indicate that Schweizer met with Paul "for the purpose of  
7 influencing" the 2016 election. To the contrary, the record, including Schweizer's statements  
8 about his reasons for meeting with Paul, as well as his subsequent meeting with Corker, as Chair  
9 of the Foreign Relations Committee, suggests otherwise. Schweizer maintains in a sworn  
10 affidavit that he knew Paul was not a candidate when they met and that their discussion  
11 concerned only the findings of his book, not the 2016 election.<sup>20</sup> He avers that he did not meet  
12 with Paul intending to influence a federal election, but instead because he believed he had a civic  
13 obligation "to bring information regarding possible unethical or illegal activity by current or  
14 former government officials to the attention of proper authority."<sup>21</sup> And although he states that  
15 the meeting with Paul "did not relate to the official marketing activities for the book,"<sup>22</sup> we  
16 recognize that Schweizer may also have met with Paul when he did to generate more interest in  
17 the book shortly before its release.

<sup>19</sup> The Commission has provided examples of information that is "of value," such as membership lists and mailing lists, as well as polling data. See 11 C.F.R. § 100.52(d)(1). Providing these types of candidate- or election-specific information to a candidate free of charge or at a reduced charge would constitute an in-kind contribution. See 11 C.F.R. § 106.4(b); *Tancredo for Congress Cmte.*, FEC Advisory Op. 2006-04 (Mar. 31, 2006) (opinion polling data); *Wash. State Democratic Cmte.*, FEC Advisory Op. 1998-18 (Oct. 9, 1998) (testing-the-waters polling data).

<sup>20</sup> Schweizer Decl. at ¶ 10.

<sup>21</sup> *Id.* at ¶ 12.

<sup>22</sup> *Id.* at ¶ 13.

1 The allegations raised in *Clinton Cash* may have supported Paul's vocal criticism of  
2 Hillary Clinton, but the record here does not demonstrate that Schweizer or his publisher  
3 provided Paul's presidential campaign with an election contribution within the meaning of the  
4 Act. We therefore recommend that the Commission find no reason to believe that Schweizer or  
5 HarperCollins made, and Paul or his authorized campaign committee received, an excessive or  
6 prohibited corporate in-kind contribution.<sup>23</sup>

7 **IV. RECOMMENDATIONS**

- 8 1. Find no reason to believe that Senator Rand Paul violated the Act or Commission  
9 regulations;
- 10 2. Find no reason to believe that Rand Paul for President, Inc. and Paul Kilgore in his  
11 official capacity as Treasurer violated the Act or Commission regulations;
- 12 3. Find no reason to believe that Peter Schweizer violated the Act or Commission  
13 regulations;
- 14 4. Find no reason to believe that HarperCollins Publishers LLC violated the Act or  
15 Commission regulations;
- 16 5. Approve the attached Factual and Legal Analysis;
- 17 6. Approve the appropriate letters; and
- 18

<sup>23</sup> Although we note that Respondents raise arguments under the volunteer exemption, the press exemption, and the exemption for bona fide commercial activity, we need not reach these issues in light of our threshold conclusion that Schweizer and HarperCollins did not make a contribution to Paul or his authorized campaign committee.

1 7 Close the file

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Date: 12-18-15

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Kathleen Guith

Kathleen Guith  
Acting Associate General Counsel

Mark Shonkwiler

Mark Shonkwiler  
Assistant General Counsel

Saurav Ghosh

Saurav Ghosh  
Attorney